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In the Supreme Court of the United States

OCTOBER TERM, 1949

No. 313

ELMER LEE WRIGHT, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The majority and dissenting opinions in the Court of Appeals (R. 86-93) are not yet reported.

JURISDICTION

The judgment of the Court of Appeals was entered June 21, 1949 (R. 93-94), and a petition for rehearing (R. 94-96) was denied July 14, 1949 (R. 96). On August 11, 1949, petitioner's time for filing a petition for a writ of certiorari was extended by order of Mr. Chief Justice Vinson to and

including September 6, 1949 (R. 100), and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1). See also Rules 37(b)(2) and 45(a), F. R. Crim. P.

QUESTIONS PRESENTED

1. Whether the evidence showed that petitioner transported Edna Mae Slayton in interstate commerce from Houston, Texas to Texarkana, Arkansas, as alleged in the indictment.

2. Whether the evidence showed that such transportation was effected with the intent and purpose on petitioner's part that Edna Mae Slayton engage in prostitution.

STATUTE INVOLVED

Section 2 of the Mann Act, 18 U.S.C. (1946 ed.) 398,[1] provided:

> Any person who shall knowingly transport or cause to be transported, or aid or assist in obtaining transportation for, or in transporting, in interstate or foreign commerce, or in any Territory or in the District of Columbia, any woman or girl for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose to induce, entice, or compel such woman or girl to become a prostitute or to give herself up to debauchery, or to engage in any other immoral practice; or who shall knowingly procure or obtain, or cause to be procured or obtained, or

[1] Now 18 U.S.C. 2421.

aid or assist in procuring or obtaining, any ticket or tickets, or any form of transportation or evidence of the right thereto, to be used by any woman or girl in interstate or foreign commerce, or in any Territory or the District of Columbia, in going to any place for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent or purpose on the part of such person to induce, entice, or compel her to give herself up to the practice of prostitution, or to give herself up to debauchery, or any other immoral practice, whereby any such woman or girl shall be transported in interstate or foreign commerce, or in any Territory or the District of Columbia, shall be deemed guilty of a felony, and upon conviction thereof shall be punished by a fine not exceeding $5,000, or by imprisonment of not more than five years, or by both such fine and imprisonment, in the discretion of the court.

STATEMENT

Petitioner and Billie Leonard Moore were indicted on September 8, 1948, in the District Court for the Western District of Arkansas in one count charging a violation of Section 2 of the Mann Act. The indictment alleged that on or about July 18, 1948, petitioner and Moore knowingly transported Edna Mae Slayton from Houston, Texas, to Texarkana, Arkansas, for the purpose of prostitution (R. 1). Following a trial by jury, petitioner and Moore were found guilty (R. 67-68) and petitioner was sentenced to three years' imprisonment (R.

68-69).[2] Their motion for a new trial was denied (R. 71), and they appealed to the Court of Appeals for the Eighth Circuit, which affirmed the convictions, one judge dissenting (R. 92-94).

At the trial the following undisputed evidence was adduced by the Government:

Edna Mae Slayton, known to petitioner to be a prostitute, had been plying her trade with Moore's assistance in Houston, Texas (R. 17, 21-22, 27, 38-39). On July 18, 1949, pursuant to a plan made by all three, she traveled with petitioner and Moore in petitioner's car from Houston, Texas, to Texarkana, Texas, the two men sharing in the driving (R. 15, 22, 27-29, 35, 38-39). Upon arrival in Texarkana, Texas at 11:00 a.m., the party stopped on the Texas side of State Line Avenue near the McCartney Hotel, where Edna left the car and walked across the street and the state line to the Jefferson Coffee Shop (R. 15, 22, 27-28, 37). Petitioner immediately drove the car with Moore and Edna's luggage to the Savoy Hotel in Arkansas (R. 22, 27-29).[3] On entering the hotel, Moore, in petitioner's presence, asked the bell boy if he "needed a girl", to which the bell boy replied in the affirmative (R. 11, 22-23). Petitioner and Moore then

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[2] Moore was sentenced to imprisonment for four years (R. 69-70).

[3] State Line Avenue in Texarkana is the Arkansas-Texas line. The McCartney Hotel is on the Texas side of the avenue. Directly across, on the Arkansas side, is the Jefferson Coffee Shop and one block east thereof on the Arkansas side is the Savoy Hotel. (R. 27.)

went to the desk, where Moore asked for a reservation in his name. He was told that there was no such reservation, but that there had been a telegraphic request for one from a Mr. and Mrs. W. L. Thomas of Houston. Petitioner thereupon said, "That's it". (R. 6-8.) Moore registered under the name of Thomas and secured a room with a double bed for himself and "his wife," specifically refusing twin beds (R. 7-9, 16, 23). The luggage, including Edna's, was taken to the room (R. 12, 23, 37-38). Immediately thereafter, Moore went to the Jefferson Coffee Shop, picked up Edna, and returned with her to the room, arriving about 11:30 a.m. Edna promptly arranged with the bell boy, in Moore's presence, to "fill a date." (R. 12-14, 23, 37, 40.) Edna occupied the room that day and practiced prostitution (R. 15-16, 39). Meanwhile, petitioner and Moore obtained rooms at the McCartney Hotel for that night (R. 33, 36).

ARGUMENT

1. Viewing the trip in its entirety, petitioner's contention that it ended in Texarkana, Texas, and did not involve interstate commerce is, to say the least, unrealistic. It is insupportable, either in fact or in law, as the Court of Appeals so cogently demonstrated (R. 88-91). The uncontroverted evidence showed that petitioner and Moore stopped at the Texas state line only long enough to permit Edna to leave the car, that they drove the car, with her luggage, directly across the state line

to the Savoy Hotel, where Moore, in petitioner's presence, registered for himself and "his wife" under the name of W. L. Thomas pursuant to a telegraphic request for a reservation sent by him from Houston with petitioner's knowledge, and that Moore immediately went to get Edna, who in the meantime had walked across the state line. This evidence, especially the proof as to the telegraphic reservation, clearly showed that the Savoy in Arkansas, and no point short of there, was the destination of the trip for all three. The fact that Edna completed the last few yards of the interstate trip on foot is wholly immaterial in view of the prior carefully made plans. The case falls squarely within the principles established in *United States* v. *Mellor,* 160 F. 2d 757, 764 (C.A. 8), certiorari denied, 331 U. S. 848, and *United States* v. *Jamerson,* 60 F. Supp. 281, 285 (N.D. Ia.), where, on analogous facts, the courts refused to permit "legal fiction" to "be substituted for realities to thwart justice." Although in those cases, the women involved returned to the car to complete the trip after walking across the state line, indicating conclusively that the trip was interstate, the evidence here of the actions of the parties prior and subsequent to the stop at the Texas line is equally convincing proof of the unitary character of the trip from Houston to the Savoy.

2. Contrary to petitioner's contention, the facts discussed in the first part of this argument also

show that petitioner's intent from the time he left Houston until he arrived at the Savoy Hotel was to transport Edna for immoral purposes. In the light of these facts, the guilty knowledge clearly inferable from the artifice of having Edna walk across the street into Arkansas, and the additional facts that petitioner knew her to be a prostitute when he left Houston with her and participated in the planning of the trip, that Moore, in petitioner's presence, made an effort to secure "dates" for Edna immediately upon their arrival at the Savoy, that no evidence was adduced indicating any other purpose for the trip on petitioner's part, and that Edna practiced prostitution at the hotel that same afternoon, it would be difficult to draw any other conclusion.

CONCLUSION

We respectfully submit that the petition for a writ of certiorari presents no questions which require further review by this Court and should therefore be denied.

PHILIP B. PERLMAN,
Solicitor General.
ALEXANDER M. CAMPBELL,
Assistant Attorney General.
ROBERT S. ERDAHL,
FELICIA H. DUBROVSKY,
Attorneys.

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